SUMMARY AND RESPONSE TO COMMENTS
HERITAGE ENVIRONMENTAL SERVICES, LLC
KANSAS CITY, MISSOURI
EPA ID# MOD981505555

The Missouri Department of Natural Resources (hereafter "the department") and the U.S. Environmental Protection Agency (hereafter "EPA"), Region 7, issued a final hazardous waste permit to Heritage Environmental Services, LLC (hereafter "the Permittee"). The final permit includes a Missouri Hazardous Waste Management Facility (MHWMF) Part I and EPA's Hazardous and Solid Waste Amendments (HSWA) Part II. The final permit allows the Permittee to continue hazardous waste storage and treatment at the facility.

The department conducted public participation activities related to the draft and final permit, as outlined in Title 40 of the Code of Federal Regulations (CFR) Part 124 and Title 10 of the Code of State Regulations (CSR) Section 25-8.124. The department invited the public to review and offer written comments and suggestions on the draft permit to the department and EPA during the 45-day public comment period. The public comment period began the day after the legal notice was published, August 19, 2005, and ended October 3, 2005.

All written comments received during the public comment period with regard to the draft permit are listed in this summary and response to comments. A response explaining how each comment was addressed in the final permit is also included. Certain requirements of the draft permit were changed based on technical or legal issues brought up by the comments. All changes to the draft permit are identified in the responses. This summary and response to comments was prepared according to the requirements of 40 CFR 124.17 and 10 CSR 25-8.124(1)(A)17.

General Comment:

COMMENT: All written comments received support the issuance of a final permit. An internal review of the permit resulted in the Department commenting regarding updated language. These departmental comments have been addressed in comments 31 through 36. The consolidated application was changed to include additional documents received since the June 2002 permit application.

Part I Comments:

COMMENT #1: *The permittee requests that the description include the term "bulking and consolidation of hazardous waste" after "waste brokering" in page 1 in the facility description.*

RESPONSE #1: This change was made to the final permit.

COMMENT #2: *The permittee requests correction of the typographical error "6" to the term "F" on page 1 in the permitted activities section.*

RESPONSE #2: This change was made to the final permit.

COMMENT #3: *The permittee objects to the language found on page 5 in the 4th paragraph of the introduction. Heritage offers objections to the standard permit language regarding compliance with other environmental laws and statutes.*

RESPONSE #3: This change was not made. The language of paragraph 4 is consistent with all other hazardous waste operating permits in Missouri. The department sees no compelling reason to remove the language from only Heritage's permit. The point of the language is to reinforce the permittee's obligation to environmental compliance. Only in certain circumstances would non-compliance with this language result in revocation or suspension of the permit, but the department reserves the right to take this action in severe cases.

COMMENT #4: *The permittee wants clarification in the permit, regarding Part I (Item III of the Schedule of Compliance) on page 10. Heritage requests that changes to the schedule approved by MDNR identified in the corrective action conditions, should corrective action activities be required, not require a modification of the permit which would potentially be a class 1 permit modification with prior director approval or a class 3 permit modification in accordance with 40 CFR 270.42, Appendix I.*

RESPONSE #4: This change was not made. The language is consistent with all other hazardous waste permits in the state of Missouri and should remain as stated. Any extensions to these dates are not considered permit modifications. These schedules are considered the standard anticipated schedule, but it is not the intention of the department to make any specific deviations from these dates require permit modification.

COMMENT #5: *The permittee requests, with respect to page 11 (part I, submittal of required information, II), that USEPA not receive copies of all information submitted to the department.*

RESPONSE #5: This change was not made. The language is consistent with all other hazardous waste permits in the state of Missouri and should remain as stated. As part of USEPA's oversight role, their file needs to remain complete with respect to all permit activities.

COMMENT #6: *The permittee requests that on page 13 (Part I, Special Permit Condition I.B, first sentence) be changed to 'The maximum inventory of "liquid hazardous" waste that may be stored at each hazardous waste container storage area is specified below.' Heritage states that this language is consistent with the current permit provided that Bay 5 is identified as not containing any free liquids in the permit.*

RESPONSE #6: This change was not made. Since waste stored in all storage bays may be in any state (solid, liquid, or gas), except Bay 5 which may contain no free liquids, and a volume requirement must be set on the total amount of waste stored, to limit only liquid hazardous waste as to volume stored would invalidate secondary containment volume calculations and invalidate storage volume limits.

COMMENT #7: *The permittee requests that on page 13 (Part I, Special Permit Condition I.B) the correct capacity of Bay 4 is 6820 gallons. There was a typographical error in the application, which stated 6800 gallons capacity.*

RESPONSE #7: This change was made to the final permit. Heritage should also update their Part A to reflect the current change.

COMMENT #8: *The permittee requests that on page 13 (Part I, Special Permit Condition I.B) the following language be added:*

'No limitation is placed on the number or volume of containers holding hazardous waste per se, that may be stored at the facility, provided that the facility's total permitted container storage capacity of 62,320 gallons in the Processing Building and the Storage Building is not exceeded. Similarly, no limitation is placed on the number or volume of containers holding hazardous waste solids per se, that may be stored at the facility provided that the facility total permitted storage capacity is not exceeded.

RESPONSE #8: This change was not made. The language in the permit is similar to that in Heritage's current continued permit. A quantifiable limit must be placed on containers due to the possibility that containers in storage might not be full. In this case, the only way to truly verify that Heritage was in compliance, if volumes are estimated from containers that are not full, would be for an inspector to have each drum (that is not full) drained and the volume measured. Obviously, this is not practical in the context of an inspection. The container storage limits listed in the permit, specifying container volume and number of containers, gives a

quantifiable amount of waste in storage that is verifiable within the time and operational constraints of typical hazardous waste inspections.

COMMENT #9: *The permittee requests that on page 13 (Part I, Special Permit Condition I.B) the table inserted be modified to contain 5 gallon pails.*

RESPONSE #9: This change was made to the final permit.

COMMENT #10: *The permittee requests that regarding page 14 (Part I, Special Permit Condition I.D.2) the department clarify that satellite accumulation areas are not part of "storage of hazardous waste on-site."*

RESPONSE #10: No change of the permit was requested or made. Satellite containers are not a part of "storage of hazardous waste on-site" with respect to permitted areas. Since they will be placed in storage when full or prior to one year after the first volume of waste is placed in them, the container itself must be DOT approved.

COMMENT #11: *The permittee requests that page 15 (Part I, Special Permit Condition I.E.6) of the permit not contain a requirement prohibiting fiberpacks from holding free liquids. Approved lined fiberpacks are DOT compliant containers for some liquid hazardous waste.*

RESPONSE #11: This change was made to the final permit. Approved DOT containers acceptable for hazardous waste shipment are acceptable for storage.

"Hazardous waste stored in Bay 5 and hazardous waste stored in Fiberpacks, at any location, shall contain no free liquids per the test methods and screening in the approved Permit application unless the Fiberpack or other container is USDOT approved to contain liquids for transport."

COMMENT #12: *The permittee requests that regarding page 16 (Part I, Special Permit Condition I.G) the department acknowledge that the design of secondary containment is currently compliant.*

RESPONSE #12: This change was made to the final permit. Instead of "permittee shall design" the final permit states that the "permittee shall maintain" the secondary containment.

COMMENT #13: *The permittee requests that regarding page 16 (Part I, Special Permit Condition I.H) the language be changed to:*

'A container storing hazardous waste shall not be staged, stored, or managed in an area not addressed by this Permit or approved Permit application for a period which exceeds 24 hours. Staging shall take place in the areas so designated in the approved Permit application. The Permittee may store pass through hazardous waste in the area set aside as a ten-day transfer area for a period of time not to exceed ten calendar days. Rail cars shall normally be loaded/unloaded within 72 hours according to plans in the approved Permit application and 10 CSR 25-7.264(3)(B).

RESPONSE #13: This change was not made to the final permit. The word "normally" in the last sentence is inconsistent with the Missouri regulation requiring loading/unloading railcars in 72 hours. If the 72-hour time frame cannot be complied within any particular case, an extension may be obtained from the department for cause.

COMMENT #14: *The permittee requests that regarding page 17 (Part I, Special Permit Condition I) a typographical error that exists in the second line at the top of the page be changed to the correct citation of 10 CSR 25-7.264(2)(I)(5).*

RESPONSE #14: This change was made to the final permit.

COMMENT #15: *The permittee requests that regarding page 17 (Part I, Special Permit Condition II, A.) the language in the last sentence be stricken as superfluous.*

RESPONSE #15: This change was made to the final permit. The sentence "All stored and treated wastes are subject to the terms of the Permit" was deleted.

COMMENT #16: *The permittee requests that regarding page 18 (Part I, Special Permit Condition II, C.) that the department concur that the facility meets the requirements.*

RESPONSE #16: No change of the permit was requested or made. The department concurs that the facility meets the requirements.

COMMENT #17: *The permittee requests that regarding page 19 (Part I, Special Permit Condition II, D.) that the term "compatible, non-reactive hazardous waste" be defined or clarified in the permit. Heritage conducts compatibility testing for materials that are bulked at the facility in accordance with the facility waste analysis plan and operating procedures. Heritage is concerned that the language will unreasonably limit the bulking of certain types of waste materials that are compatible with other wastes for bulking in fuel tanks and acceptable as fuels.*

RESPONSE #17: This change was made to the final permit. A parenthetical was added after the term 'compatible, non-reactive hazardous waste' to add the words (as determined by the facility operating procedures and waste analysis plan which are part of the approved Permit application).

COMMENT #18: *The permittee requests that regarding page 23 (Part I, Special Permit Condition II, I.) the permit language be changed to reflect the requirements of Section E. of the approved Permit application.*

RESPONSE #18: This change was made to the final permit. Heritage must do the ultrasonic tank thickness testing within 18 months. The department rejects extending the time period between thickness testing to 24 months at this time. The department is unsure what other changes Heritage is requesting with respect to II. I., if any.

COMMENT #19: *The permittee requests that regarding page 23 (Part I, Special Permit Condition II, I.1.) clarification be made as to whether there are additional requirements beyond Section E. of the approved Permit application.*

RESPONSE #19: This change was made to the final permit. Heritage must follow Section E. of the approved Permit application with respect to level control inspections. Additional requirements were not meant to be included in this item. This is reflected in the final wording of the condition that now reads:

"The Permittee shall follow the schedule and written procedures for inspecting overfill controls in the approved Permit application."

COMMENT #20: *The permittee requests that regarding page 24 (Part I, Special Permit Condition II,J.4.b.) that the department clarify by adding "to the environment" after the words "hazardous waste" in the first line.*

RESPONSE #20: This change was made to the final permit. The department also added clarification with the word "non-acute" before "hazardous waste."

COMMENT #21: *The permittee requests that regarding page 29 (Part I, Corrective Action Condition II, B.) that the plan be completed within 60 days.*

RESPONSE #21: This change was not made. This is standard permit language and extensions of this time period may be obtained from the department without a permit modification.

COMMENT #22: *The permittee requests that regarding page 31 (Part I, Corrective Action Condition III, A.) that the permit provides no basis for determining when a release should have been discovered and therefore the phrase "…or after discovery should have been made of…"is an unreasonable requirement and should be deleted.*

RESPONSE #22: The final permit was changed to define that when discovery should have been made will be determined from inspection records. The added language is in bold. The draft permit contains standard legal language with very specific meaning and is standard to all Part I permits. The department believes that this is a reasonable requirement similar to other notification/ reporting standards in Missouri Law. The permittee is expected to act reasonably in deciding whether notification/reporting are necessary under these conditions and contact the department when in doubt.

"The Permittee shall notify the Department and the EPA, in writing, no later than 15 days after discovery, or after discovery should have been made of any newly identified release(s) of hazardous waste, including hazardous constituents from previously identified SWMUs and/or AOCs, discovered during the course of groundwater monitoring, field investigation, environmental auditing, or other activities undertaken after issuance of this Permit. Facility inspection records will be examined to determine if the Permittee should have known a release had occurred."

COMMENT #23: *The permittee requests that regarding page 32 (Part I, Corrective Action Condition IV, A.) that similarly to comment 24, language requiring notification of MDNR within 24 hours of becoming aware "or should have become aware" that interim stabilization/measures may be required is unreasonable.*

RESPONSE #23: Like the previous comment, the final permit has been changed to define that when notification should have been made will be determined from inspection records. The added language is in bold. The draft permit contains standard legal language with very specific meaning and is standard to all Part 1 permits. The department believes that this is a reasonable requirement similar to other notification/reporting standards in Missouri Law. The

permittee is expected to act reasonably in deciding whether notification/reporting are necessary under these conditions and contact the department when in doubt.

"If the Permittee becomes aware of a situation that may require interim stabilization measures to protect human health or the environment, the Permittee shall notify the Department and the EPA within 24 hours of the time the Permittee becomes aware or should have become aware of the situation. Facility inspection records will be examined to determine if the Permittee should have known interim/stabilization measures and notification should have occurred."

COMMENT #24: *The permittee requests that regarding page 33 (Part I, Corrective Action Condition V, A.) that the plan be completed within 90 days.*

RESPONSE #24: This change was not made. This is standard permit language and extensions of this time period may be obtained from the department without a permit modification.

COMMENT #25: *The permittee requests that regarding page 34 (Part I, Corrective Action Condition VI, A.) the department clarify that any schedule changes associated with the implementation of the RFI are not part of the compliance schedule and would not require a permit modification as contemplated in the permit.*

RESPONSE #25: This change was not made. This is standard permit language and extensions of this time period may be obtained from the department without a permit modification. It is not the intention of the permit to require formal modifications of the schedule based on contingent corrective action.

COMMENT #26: *The permittee requests that regarding page 37 (Part I, Corrective Action Condition VII, C.) that the plan be completed within 60 days.*

RESPONSE #26: This change was not made. This is standard permit language and extensions of this time period may be obtained from the department without a permit modification.

COMMENT #27: *The permittee requests that regarding page 39 (Part I, Corrective Action Condition X.) the annual progress report requirement is unreasonable and should be deleted.*

RESPONSE #27: This change was not made. This is standard permit language and is consistent with all other hazardous waste facility operating permits in Missouri. The annual progress report and its contents

are not required if there is no corrective action currently being undertaken under the requirements.

COMMENT #28: *The permittee requests that regarding page 41 (Part I, Corrective Action Condition XIV.) that the department clarify the relevance of this section.*

RESPONSE #28: This change was not made. This is standard permit language and is consistent with all other hazardous waste facility operating permits in Missouri. Although it may seem redundant, this is a restatement of the need to comply with all schedules in the permit conditions. If there is no schedule in a particular section of the permit it is not applicable to that section.

COMMENT #29: *The permittee requests that regarding page 42 (Part I, Facility Submissions Summary, Table III) that the department clarify that a 30-day extension can be requested and reasonably obtained for submitting biennial reports and quarterly reports. Heritage requests that any modification of this time not require a modification request.*

RESPONSE #29: The requested footnote to the table was made.

*** Extensions may be requested and granted for cause without modifying this permit.**

The table is for informational purposes and a convenient restatement of requirements.

COMMENT #30: *The permittee requests that regarding page 43 (Part I, Facility Submissions Summary, Table IV) that the department change the table to reflect any changes made to corrective action time frames.*

RESPONSE #30: No changes were made to the table, because the placeholder time frames for contingent corrective action have not been changed.

COMMENT #31: *The department commented that a portion of the appeals language on page 6 should be changed –*

<u>Old Permit Language:</u>

Any appeals of the issuance or denial of the Permit or specific Permit conditions based on state authority shall be filed in accordance with Section 260.395.11, RSMo. The appeal shall be filed with the Missouri Hazardous Waste Management Commission within 30 days from the date of this Permit. The Missouri Supreme Court has ruled that corporations and associations may only proceed in legal matters through attorneys licensed to practice in

Missouri. Reed v. Labor and Industrial Relations Commission, 789 S.W.2d 19 (Mo banc 1990). The court held that a pleading, filed by a non-attorney on behalf of a corporation or association is null and void, and therefore, such pleading will not be accepted by the Hazardous Waste Management Commission. Individuals and partnerships are not required to have an attorney and are allowed to represent themselves in front of the Commission.

New Permit Language:

"Any appeals of the issuance or denial of the Permit or specific Permit conditions based on state authority shall be filed in accordance with Section 260.395.11, RSMo. The appeal shall be filed with the Missouri Hazardous Waste Management Commission within 30 days from the date of this Permit. The Missouri Supreme Court has ruled that corporations and associations may only proceed in legal matters through attorneys licensed to practice in Missouri. Reed v. Labor and Industrial Relations Commission, 789 S.W.2d 19 (Mo banc 1990). The court held that a pleading, filed by a non-attorney on behalf of a corporation or association is null and void, and therefore, such pleading will not be accepted by the Hazardous Waste Management Commission. Individuals and partnerships are not required to have an attorney and are allowed to represent themselves in front of the Commission."

RESPONSE #31: After reviewing policy, this change was instituted to match what is current.

COMMENT #32: *The department commented that Schedule of Compliance Item I.D. on page 10 regarding fees should be changed for clarification -*

Old Permit Language:

"*Submit to the Department a check or money order payable to the State of Missouri for $1,000 for each year the Permit is to be in effect beyond the first year. This Permit is effective for ten years. Since the Permittee has submitted a check for $1,000 with the Resource Conservation and Recovery Act Permit application, the remaining balance to be submitted by the Permittee is $9,000 less an equivalent of $1,000 for the period of time from the effective date of this ten year Permit to _____. For the purpose of calculating the equivalent per day cost of $1,000/year, the factor of 365 days/year shall be used. This check shall be directed to the Hazardous Waste Program, Permits Section."*

New Permit Language:

"Submit to the Department a check or money order payable to the State of Missouri for $1000 for each year the Permit is to be in effect beyond the first year. This Permit is effective for ten years. Since the Permittee has submitted a $1000 deposit with the Resource Conservation and Recovery Act Permit application, the remaining balance to be submitted by the Permittee is calculated as

$$Remaining\ balance = \$9000.00 - \left(\frac{\$1000.00}{365 \cdot days} \right) \times N_d$$

where N_d equals the number of days from the date of the permit reissuance to expiration date of the continued permit (which coincides with the anniversary date of the original permit issuance). An invoice is included with the final Permit. The check shall be directed to the Hazardous Waste Program, Permits Section."

RESPONSE #32: This change was made to simplify the calculation for fees paid to the department.

COMMENT #33: *The department commented that on page 17 Section H of Special Permit Condition I.H., the term "store" should be changed to "stage" to reflect the fact that these hazardous wastes are managed under transfer facility regulations. A clarification should also be added that overall transportation of hazardous waste must be in compliance with the time frames or approval requirements at 10 CSR 25-6.263(2)(A)10.*

RESPONSE #33: The changes were made to clarify that the waste will be staged in this area under hazardous waste transfer facility regulations as modified by Missouri requirements for time frames and approval.

COMMENT #34: *The department commented that Special Permit Condition K. on page 25 the standard language should be changed:*

<u>Old Permit Language:</u>

"The Permittee shall not place ignitable or reactive waste in tank systems, unless:"

<u>New Permit Language:</u>

"The Permittee shall not place ignitable or reactive waste in tank systems, unless it meets one of the following conditions:"

RESPONSE #34: This change was made to conform to the regulation, which states that one of the conditions must apply, not all.

COMMENT #35: *The department commented that on page 42 Table III - Summary of the Submittal Requirements Pursuant to this Permit the phrase "$9000 and" should be removed from the statement*

"*Check or money order for $9000 and all outstanding engineering review costs."*

RESPONSE #35: This change was made to clarify the amount of money that could be collected and conform with the changes that were made per comment 32.

COMMENT #36: *The department commented that on page 44, Table IV - Summary of the Contingent Corrective Action Submittal Requirements, and in Corrective Action Condition X.II.B. the update of financial assurance for Corrective Action wording should be changed*

Old Permit Language:

"March 1 of each calendar year."

New Permit Language:

"Annually, within 60 days before the anniversary date of the establishment of the financial insurance instrument."

RESPONSE #36: This change was made to accurately reflect current requirements for the update of financial assurance.

Part II Comments:

COMMENT #1: *Heritage was unable to find reference to an "Annual Compliance Period." Heritage believes that this term is superfluous and should be deleted.*

RESPONSE #1: This reference has been deleted from Paragraph A, Definitions, which is on page 4 the HSWA Part II permit.

COMMENT #2: *Please provide the regulatory requirement that conditions a permit renewal application and its review on "improvements in the state of control and measurement technology, as well as changes in applicable regulations." Otherwise, Heritage requests that this language be removed from the permit.*

RESPONSE #2: Under paragraph B.3 of the Part II permit, which Heritage's comment addresses, it has the responsibility to reapply for its permit in accordance with 40 CFR Part 270.30 (b). This is a

standard permit condition. Under 40 CFR 270.32, the EPA Director shall establish permit conditions that are necessary to achieve compliance with the Act and regulations [40 CFR 270.32 (b)(1)], necessary to protect human health and the environment [40 CFR 270.32 (b)(2)], and to take into account applicable requirements that are effective prior to the reissuance of the permit [40 CFR 270.32 (c)].

Further, under 40 CFR 270.41 (a)(3), the Director may modify or reissue permits based on new statutory requirements or regulations.

No change will be made to the Part II permit.

COMMENT #3: *This language is inconsistent with 40 CFR Part 270.30(i) and should be revised accordingly.*

RESPONSE #3: The Agency disagrees. While it is unclear from the comment which part of the permit condition Heritage believes disagrees with 40 CFR 270.30(i), EPA interprets permit condition B.12.c. which states, "Inspect and photograph, at reasonable times, any facility's equipment (including monitoring and control equipment), practices, or operations regulated or required under Part II of this permit" to be within its authority for monitoring the routine operations of the facility. No change is necessary.

COMMENT #4: *Heritage requests that the language be revised concerning the twenty days advanced notice of planned changes. Heritage would make any changes at the facility in accordance with 40 CFR Part 270.42 and this provision appears to obligate Heritage to make an additional notification to the USEPA.*

RESPONSE #4: Heritage's comment pertains to paragraph B.14., Reporting Planned Changes, page 10, of the HSWA Part II permit. General Permit Conditions listed in 40 CFR 270(k)(1) require the facility to give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. The 20 day notification requirement is reasonable to satisfy this required permit condition. No change is necessary.

COMMENT #5: *Heritage objects to the last sentence in this section and requests that it be removed. Heritage is not aware of any federal or state statute or regulation where RCRA operating permit language requires compliance with or compliance with reporting requirements to any other state rules or statutes as a term of the permit. This language would allow the USEPA and MDNR to issue multiple violations or penalties one for the violation of applicable law and/or regulation and one for the violation of the permit simply for having a permit, which is unreasonable and not in any regulation governing the RCRA operating permits. Heritage has been unable to determine how broad, encompassing language requiring compliance with any and all environmental laws and regulations at the federal, state, and local level, many of which would presumably have little or no relevance with this permit complies with the requirements of 40 CFR Part 270.32 and why this language is "necessary to protect human health and the environment." Heritage wonders if all other facilities that have environmental permits issued by the United States Environmental Protection Agency, including state and federal facilities, with any environmental permits issued under federal, state, and local authorities have similar requirements in their operating permits. If not, it seems unreasonable that Heritage would be subjected to these requirements for this permit.*

RESPONSE #5: Heritage's comment addresses paragraph B.16., Other Information, on page 11 of the HSWA Part II permit. The purpose for this language which is standard language in Agency permits is that it prevents the permittee from using the "permit as a shield" as a defense against non-compliance with applicable environmental statutes. No change is necessary.

COMMENT #6: *Heritage objects to this section of the permit unless any decision of the Director or the Director's delegate is an action potentially subject to review under an appeal process.*

RESPONSE #6: Paragraph B.18 which Heritage's comment addresses is standard permit language which provides for the dispute resolution process. If Heritage disagrees with the dispute resolution, it may appeal the decision to the Director as provided in paragraph B.6. No change is necessary.

COMMENT #7: *Heritage requested a Class 2 permit modification from EPA on February 17, 2006, for the addition of waste code K181 to allow the storage and treatment of nonwastewaters from the production of dyes, pigments, food, drug, and cosmetic colorants.*

RESPONSE #7: The EPA and DNR agree with this requested modification. Because the DNR is not yet authorized by EPA to permit this newly promulgated waste code, the HSWA Part II Permit will be reissued to include it. The waste code K181 has been added to Section C. Facility-Specific Permit Condition, item 2. Waste Codes, on page 14 of the HSWA Part II Permit.